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16660—33—1

In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 54

ACEL C. ALEXANDER, COLLECTOR OF INTERNAL REVENUE, petitioner

v.

COSDEN PIPE LINE COMPANY, A CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The findings of fact and conclusions of law of the District Court for the Western District of Oklahoma (R. 110–119) are not reported. The opinion of the Circuit Court of Appeals (R. 128–133) is reported in 63 F. (2d) 663.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered February 9, 1933, and modified February 23, 1933, following the filing of a remittitur by the respondent (R. 134). The petition for a writ of certiorari was filed May 9, 1933, and was granted October 9, 1933. The jurisdiction of this Court

rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

When a carrier by pipe line charges a rate which is less than the usual charge for such service, does the rate charged fix the basis for the assessment of excise taxes under the Revenue Acts of 1917 and 1918, or does the Commissioner have the power to ascertain and fix the basis for such assessment from published tariffs or, in the event there are no published tariffs, by determining a reasonable charge for the service?

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in Appendix A, *infra*, pp. 18–22.

STATEMENT

The respondent brought this action in the United States District Court for the Western District of Oklahoma to recover excise taxes paid on the transportation of oil by pipe line during the period from November 1, 1917, to December 31, 1921 (R. 1–9). The case was tried by the court without a jury under a written stipulation (R. 9) and resulted in a judgment in favor of the respondent (R. 33) from which judgment the petitioner appealed to the Circuit Court of Appeals (R. 120). The District Court made special findings of fact (R. 23–32, 110–119) which may be summarized as follows:

The respondent is a corporation organized under the laws of Oklahoma. During the period involved it

operated pipe lines for the transportation of oil in Oklahoma (R. 37). During all of the time referred to, Cosden and Company, a corporation organized under the laws of Oklahoma, operated an oil refinery in Tulsa, Oklahoma, and owned all of the capital stock of the respondent (R. 37). During the period from November 1, 1917, to March 31, 1919, the respondent transported by pipe line and delivered to Cosden and Company 2,022,248.41 barrels of oil, and set up on its books a charge against Cosden and Company of 5 cents per barrel for such transportation and paid excise taxes on the transportation based upon such rate of 5 cents per barrel. Thereafter the Commissioner of Internal Revenue increased the basis for such excise from 5 cents per barrel to 20 cents per barrel, and in accordance with such change assessed additional taxes amounting to $15,066.87, which amount was paid (R. 38).

During the same period from November 1, 1917, to March 31, 1919, the respondent transported by pipe line and delivered to Cosden and Company 3,666,048.39 barrels of oil, for which transportation no charge was set up against Cosden and Company on the books of the respondent. Thereafter the Commissioner of Internal Revenue determined that this movement of oil was taxable under the provisions of the statute and determined that a reasonable basis for such tax, based upon the published tariffs of other carrier pipe lines in the same field, was 20 cents per barrel and assessed against the respondent taxes in the amount of $36,660.50, which amount was paid (R. 38).

During the period from April 1, 1919, to December 31, 1921, the respondent transported by pipe line and delivered to Cosden and Company 20,644,020.34 barrels of oil and set up on its books a charge against Cosden and Company of 10 cents per barrel for such transportation and paid tax thereon. Thereafter the Commissioner of Internal Revenue increased the basis for the tax from 10 cents per barrel to 20 cents per barrel and assessed additional excise taxes amounting to $170,946.04, which amount was paid. Thereafter, $5,793.76 of this sum was refunded to the respondent, due to errors in computation (R. 38–39).

During the period from November 1, 1917, to March 31, 1919, the respondent transported for the Pierce Oil Company 99,590.31 barrels of oil, for which it made no charge. The Commissioner assessed a tax of $995.90, based on a charge of 20 cents per barrel on the transportation of this oil (R. 110).

In the operation of the respondent's business, oil was purchased anywhere along its line where it was available regardless of pump stations or anything else (R. 115). The money therefor was furnished by Cosden and Company (R. 72). The oil so purchased was moved by the respondent from the tanks located on the property of the producer from whom the oil was purchased through lateral pipe lines of the respondent to storage tanks on its tank farms or to destination.

The respondent never filed or promulgated tariffs for the carriage of oil by pipe line and never maintained tariff stations (R. 37).

The District Court reached a conclusion of law that the oil transported was owned by Cosden and Company; that the respondent was organized merely for the convenience and accommodation of Cosden and Company, and was not bound to charge a higher rate for the transportation of the oil than was actually necessary to meet the operations of the respondent; that the Commissioner of Internal Revenue has no power to establish pipe-line rates for the transportation of oil as between the respondent and Cosden and Company except such as is granted in Section 501 of the Revenue Act of 1917 and in Section 501 (d) of the Revenue Act of 1918; and under said Revenue Acts, where a rate has been established by the respondent with Cosden and Company which is reasonable under all the circumstances, the same rate should be applied as between the same parties for the purposes of taxation where for any reason no rate has been charged (R. 116).

The District Court entered a judgment against the petitioner, on the first claim of $15,066.87, on the second claim of $165,152.28, on the third claim of $18,333.25, and on the fourth claim of $746.92 together with interest on each of said claims.

The Circuit Court of Appeals held that the respondent and Cosden and Company were separate entities in law, and that the language in the Revenue Acts of 1917 and 1918 "in case such carrier does not * * * receive the amount which as a carrier it would otherwise charge" has reference only to cases where no charge is made (R. 131). The court con-

cluded "that where a bona fide charge was actually made the commissioner was without authority to compute the tax on a higher basis" (R. 132). The court held that as to the oil transported for Cosden and Company for which no charge was made such movement involved both a gathering service and a main-line transportation; that the respondent had no "rates or tariffs on file with the proper Federal or State authority" (R. 132), therefore the tax was properly computed by the Commissioner of Internal Revenue on the basis of the rates or tariffs of other carriers for like services.

The court further held that the finding by the Commissioner that the basis or rates for other carriers for like service was 12½ cents for the gathering service and 7½ cents for main line transportation is fully supported by the evidence; and further that since the transportation for the Pierce Oil Corporation involved only a gathering service the basis for the tax should have been 12½ cents a barrel instead of 20 cents, but that these rates could only be imposed where no charge was made. In accordance with this opinion the appellate court ordered a remittitur of $18,333.25 and $375.71, which remittitur was duly filed by the Pipe Line Company (R. 134). Final judgment was then entered (R. 135) affirming the judgment of the District Court in the amount of $180,590.36 with interest.

SPECIFICATION OF ERRORS

The Circuit Court of Appeals erred:

1. In holding that the tax upon the transportation of oil by pipe line imposed by the Revenue Acts of

1917 and 1918 must be based upon the charges actually made by a carrier transporting oil for its sole stockholder.

2. In construing the statutes so as to require the tax to be based upon a charge which is nominal in amount and which was fixed by the parties without regard to the prevailing commercial rates.

3. In adopting a construction of the statutes which permits the Commissioner of Internal Revenue to apply the prevailing commercial rates only where no charge whatsoever is made by the carrier.

4. In failing to reverse the judgment of the District Court on the ground that the findings are not supported by the evidence.

5. In failing to reverse the judgment of the District Court because the findings were insufficient to support the judgment.

6. In holding that upon the law and the evidence the respondent was entitled to judgment in any amount.

SUMMARY OF ARGUMENT

This is an excise tax on the transportation of oil by pipe line. It is essentially a tax upon commercial transportation, although it applies also to such private transportation as is of substantially the same character as commercial transportation. Under these circumstances Congress intended to and did provide that the tax should be based upon commercial rates. This purpose is explicitly expressed in the 1917 Act. Certain changes were made in the 1918 Act to eliminate other controversial questions with the result that

Congress expressed its purpose in the 1918 Act in language somewhat different from that in the 1917 Act. But we submit that the same purpose persisted and that a construction which would require the tax to be computed on the basis of an inadequate charge made by the respondent to its parent is contrary to the spirit and purpose of the statute.

ARGUMENT

The question presented is whether the tax upon the transportation of oil by pipe line is to be based upon a nominal charge which the respondent made to its parent or whether the usual commercial rate is the proper basis. This question arises under both the Revenue Acts of 1917 and 1918, and although their language is somewhat different, the court below held that the tax must be computed upon the charges which the respondent entered upon its books rather than the larger rate which was shown to be the commercial rate for such transportation.

Essentially, this is a tax upon commercial transportation and it would be reasonable to expect that the commercial rate would be made the basis for the tax. This is what the statute accomplished by the provision that the tax is to be based upon the amount paid for the transportation. (Section 500 of the Revenue Act of 1917 and Section 500 (e) of the Revenue Act of 1918; *infra*, pp. 18–19.) To provide for the situation where the usual amount is not paid for such transportation the Revenue Act of 1917 provides as follows (Section 501):

> In case such carrier does not, because of its ownership of the commodity transported, or for any other reason, receive the amount which as a carrier it would otherwise charge, such carrier shall pay a tax equivalent to the tax which would be imposed upon the transportation of such commodity if the carrier received payment for such transportation: * * *.

This language engendered a controversy with respect to whether the tax applied to other than public carriers, and in *Meischke-Smith* v. *Wardell*, 286 Fed. 785 (C.C.A. 9th), it was held that the 1917 Act applied to private pipe lines used by the owner and not dedicated to a common use. The 1918 Act disposed of the controversy with respect to whether the tax was applicable to other than common carriers by the provision in Section 501 (c) that "the taxes imposed by Section 500 shall apply to all services or facilities specified in such section when rendered for hire, whether or not the agency rendering them is a common carrier." It was also provided in Section 501 (d) of the Revenue Act of 1918 (*infra*, p. 20), that:

> The tax * * * shall apply to all transportation of oil by pipe line.

This provision supplemented the provision of Section 501 (c), eliminating any controversy with respect to whether the tax applied to other than carriers, and it also imposed the tax whether or not the services were rendered for hire. Having thus imposed the burden of the oil transportation tax irrespective of whether the taxpayer was a carrier for hire, it was

necessary for Congress to provide for the situation where the transportation was made upon other than a commercial basis. The language of Section 501 of the Revenue Act of 1917 above quoted was not appropriate for this situation because in the 1918 Act the tax was made to apply to all transportation of oil whether by carrier or not. Hence the language was changed, but since Congress intended that the tax should continue to be based upon commercial rates, the following provision was inserted in Section 501 (d) of the Revenue Act of 1918:

> In case no charge for transportation is made, by reason of ownership of the commodity transported, or for any other reason, the person transporting by pipe line shall pay a tax equivalent to the tax which would be imposed if such person received payment for such transportation, * * *.

The intention of Congress is to be gathered from an examination of every material part of the statute (*Hellmich* v. *Hellman*, 276 U.S. 233), and evidence of the purpose of Congress to prevent a departure from the commercial rates as the basis for the tax is contained within this statute. Section 500 (e) of the Revenue Act of 1918 imposes a tax equivalent to a certain percentage "of the amount paid for the transportation." Where the parties are dealing at arms length, the amount paid will naturally be based upon the commercial rates. To provide for the situation where no charge whatsoever is made, by reason of ownership or otherwise, Section 501 (d) of the Revenue Act of 1918 clearly requires that the com-

mercial rates be ascertained and applied. In *Standard Oil Co.* v. *McLaughlin* (C.C.A. 9th), decided September 16, 1933, and reported in 333 C.C.H. par. 9513, dealing with the Revenue Act of 1918, the court said:

> It clearly appears from the provisions of Section 501 (d) that the reasonable charge contemplated is a charge similar to that made by the owners of pipe lines where they have dedicated their property to a public use.

The carrier in that case was transporting its own oil and except for the separate corporate entities in this case the respondent would have been carrying its own oil. However, there is no indication that Congress intended the tax to vary in amounts depending upon whose oil was transported. The tax was upon the transportation, and the effort of Congress was to tax all transportation, even of the carrier's own oil. There is no doubt that Congress had the authority to fix upon the commercial rates as the basis for the tax and it plainly indicated its intention to do so. This is an excise tax and subject to the constitutional requirement of uniformity. Accordingly, the purpose to make the rate depend upon so variable a factor as a bookkeeping charge between affiliated companies, is not to be lightly imputed to Congress.

Where the person transporting oil is not a commercial carrier, the regulations under which this statute was administered provide that only transportation which is substantially similar to commercial transportation shall be construed to be a taxable

transportation. (Article 92, Regulations 49, Revised, June 1921; *infra*, p. 20.) Thus the commercial concept is carried into the administration of the statute, and it is only the commercial phases of transportation which are affected. It is accordingly wholly reasonable that only commercial charges shall be used as the basis.

The term "charge" is used twice in Section 501 (d), as follows: "In case no *charge* for transportation is made * * * the tax * * * shall be computed * * * on the basis of a *reasonable charge* for such transportation." We submit that the term "charge" in both instances has the same meaning and that the term excludes an arbitrary and inadequate bookeeping entry. Only in the absence of actual *bona fide* rates or tariffs of other pipe lines for like services may the Commissioner fix a reasonable charge, again evidencing the purpose of Congress to base the tax upon commercial rates and impose the same tax burden upon private transportation which was so definitely imposed upon public transportation.

This was the administrative interpretation of the statute. In the official instructions issued to collectors (see Appendix B, *infra*, pp. 23–26) the following statement appears:

> (11) Where a nominal charge or no charge is made for the service rendered, the tax should be based on the ordinary or customary charge for like or similar service in the same field, or if no such basis of comparison can be found, on the ordinary or customary charge for like

or similar service in some other field where conditions are substantially similar.

We submit that these instructions are in accord with the spirit and purpose of the statute, that they are entitled to great weight and should not be departed from except for cogent reasons. *Brewster* v. *Gage*, 280 U.S. 327.

The courts have been called on to interpret the section of the revenue law relating to rates of transportation by utilities and it has been held in many cases that the rates upon which these excise taxes shall be based are the commercial or market rates, regardless of whether a charge is actually made for the service. Thus in *Western Union Tel. Co.* v. *Delaware, L. & W. R. Co.*, 282 Fed. 925 (S.D.N.Y.), involving the tax imposed by Section 500 (f) of the Revenue Act of 1918, the Telegraph Company had made a contract providing for mutual interchange of services with the railroad company whereby messages were sent without charge.

It was held that the railroad company could not question the legality of the tax nor the right of the Commissioner to base the tax on the commercial rate. In *Hellmich* v. *Missouri Pacific*, 273 U.S. 242, the Railroad Company sued to recover taxes for the transmission of telegraph messages, transmitted by the Telegraph Company under a contract for the exchange of facilities with the Railroad Company, and taxed at commercial rates under Sections 500 and 501 of the Revenue Acts of 1918 and 1921. The mutual services to be rendered under the contract obviously

constituted a "charge." Treasury Regulations 57, Article 9, provided for the computation of the tax on telegraph messages on the established rates and this Court upheld the application of commercial rates in fixing the tax.

The Court of Claims in the case of *Erie R. Co.* v. *United States*, 54 F. (2d) 173, involving a contract for exchange of services between a railroad company and a telegraph company held that the tax imposed by Sections 500 (f) and (g) and 501 (a) and (c) of the Revenue Act of 1918 and 500 (a) and (b) of the Revenue Act of 1921 was payable at the commercial rate instead of a percentage of that rate fixed in the contract between the parties. The District Court of Kansas in the case of *Kemper* v. *Motter*, 25 F. (2d) 1010, holding such messages not taxable, was reversed by the Circuit Court of Appeals, on stipulation of the parties, in *Motter* v. *Kemper*, 31 F. (2d) 1018 (C.C A. 8th).

Likewise, where the question of basis for tax has been involved in cases arising from premiums or gifts in exchange for coupons, it has been held that the transaction involved a sale of the article exchanged for coupons within the provisions of Section 905 of the Revenue Act of 1918, and that the tax on such sales should be assessed on the market value of the article sold. *Colgate & Co.* v. *United States*, 66 C.Cls. 510; *United Profit Sharing Corp.* v. *United States*, 70 C.Cls. 788, certiorari denied, 282 U.S. 881; *United Cigar Stores* v. *United States*, 72 C.Cls. 453, certiorari denied, 284 U.S. 666.

We do not overlook the rule that provisions imposing a tax in taxing statutes are to be construed most favorably to the taxpayer, but that is not a reason for creating or exaggerating a doubt. *Irwin* v. *Gavit*, 268 U.S. 161. Moreover, the doubt must be one which cannot be overcome by the application of any other recognized rule of construction. *Baltimore Talking Board Co.* v. *Miles*, 280 Fed. 658, 661 (C.C.A. 4th), certiorari denied, 259 U.S. 587. There can be no doubt that the tax is directed at the operations of this respondent, so that the rule is satisfied in that respect. Here the question is whether the statute should be so construed as to accord preferential treatment to the respondent and permit its tax to be computed upon rates fixed by itself, while as to all others the commercial basis is used.

The contention that the tax is to be limited by an inadequate charge is a claim to preferential treatment and requires the application of the rule that the taxpayer must clearly bring himself within the intent of the statute. With respect to a taxing statute this Court said in *Cornell* v. *Coyne*, 192 U.S. 418, 431:

> But if there were a doubt as to the meaning of the statute that doubt should be resolved in favor of the government. Whoever claims a privilege from the government should point to a statute which clearly indicates the purpose to grant the privilege.

See also *Bowers* v. *Lawyers Mortgage Co.*, 285 U.S. 182; *Mass. Mutual Life Ins. Co.* v. *United States*, 288 U.S. 269.

The court below held that both Section 501 of the Revenue Act of 1917 and Section 501 (d) of the Revenue Act of 1918 apply only to cases where no charge is made. This construction disregards the plain language of the 1917 Act that where a carrier does not "receive the amount which as a carrier it would otherwise charge", the tax is to be based upon commercial rates. The purpose of Congress to base the tax upon commercial rates is entirely clear and there is nothing in the 1917 Act to suggest that the use as a basis of "the amount which as a carrier it would otherwise charge" is to be limited to those cases where no charge is made. The reasoning of the court below was that a carrier could not charge itself for services rendered to itself and hence the only application of the statute would be where no charge was made. But the operation of the statute is not limited to cases where the carrier owns the commodity transported. The language of the statute is clear and it applies wherever the carrier does not "because of its ownership of the commodity transported, *or for any other reason*" receive the amount which as a carrier it would otherwise charge.

Accordingly we submit that the court below erred in its construction of the 1917 Act and that the statute in plain terms applies to any situation where the carrier does not receive the amount which as a carrier it would otherwise charge and requires that the tax be based upon the rate which a carrier would have charged; that is, the commercial rate.

Although the language of Section 501 of the Revenue Act of 1917 was not repeated in the 1918 Act without change, we submit that the change was merely one of phraseology and arose from the elimination of other controversial questions, but that the congressional purpose persisted in imposing the tax upon the basis of commercial rates. The report of the Senate Finance Committee states specifically that the provisions of the title including the tax on the transportation of oil by pipe line "are retained without substantial change." Senate Report No. 617, 65th Congress, 3d session, p. 16; *infra*, p. 21.

CONCLUSION

In view of the foregoing it is respectfully submitted that the judgment of the court below should be reversed.

J. CRAWFORD BIGGS,
Solicitor General.
J. LOUIS MONARCH,
F. EDWARD MITCHELL,
Special Assistants to the Attorney General.

OCTOBER 1933.

APPENDIX A

STATUTES INVOLVED

Revenue Act of 1917, c. 63, 40 Stat. 300:

> SEC. 500. That from and after the first day of November, nineteen hundred and seventeen, there shall be levied, assessed, collected, and paid * * * (d) a tax equivalent to five per centum of the amount paid for the transportation of oil by pipe line; * * *.
>
> SEC. 501. That the taxes imposed by section five hundred shall be paid by the person, corporation, partnership, or association paying for the services or facilities rendered.
>
> In case such carrier does not, because of its ownership of the commodity transported, or for any other reason, receive the amount which as a carrier it would otherwise charge, such carrier shall pay a tax equivalent to the tax which would be imposed upon the transportation of such commodity if the carrier received payment for such transportation: *Provided*, That in case of a carrier which on May first, nineteen hundred and seventeen, had no rates or tariffs on file with the proper Federal or State authority, the tax shall be computed on the basis of the rates or tariffs of other carriers for like services as ascertained and determined by the Commissioner of Internal Revenue: *Provided further*, That nothing in this or the preceding section shall be construed as imposing a tax (a) upon the transportation of any commodity which is necessary for the use of the carrier in the conduct of its business as such and is intended to be so used or has been so used; or (b) upon the transportation of company material trans-

ported by one carrier, which constitutes a part of a railroad system, for another carrier which is also a part of the same system.

Revenue Act of 1918, c. 18, 40 Stat. 1057:

SEC. 500. That from and after April 1, 1919, there shall be levied, assessed, collected, and paid, in lieu of the taxes imposed by section 500 of the Revenue Act of 1917—

* * * * *

(e) A tax equivalent to 8 per centum of the amount paid for the transportation on or after such date of oil by pipe line;

* * * * *

SEC. 501. (a) That the taxes imposed by section 500 shall be paid by the person paying for the services or facilities rendered.

* * * * *

(c) The taxes imposed by section 500 shall apply to all services or facilities specified in such section when rendered for hire, whether or not the agency rendering them is a common carrier. In case a carrier (other than a pipe line) principally engaged in rendering transportation services or facilities for hire does not, because of its ownership of the goods transported, or for any other reason, receive the amount which as a carrier it would otherwise charge, such carrier shall pay a tax equivalent to the tax which would be imposed upon the transportation of such goods if the carrier received payment for such transportation, such tax, if it cannot be computed from actual rates or tariffs of the carrier, to be computed on the basis of the rates or tariffs of other carriers for like services as determined by the Commissioner. In the case of any carrier (other than a pipe line) the principal business of which is to transport goods belonging to it on its own account and which only incidentally

renders services for hire, the tax shall apply to such services or facilities only as are actually rendered by it for hire. Nothing in this or the preceding section shall be construed as imposing a tax (1) upon the transportation of any commodity which is necessary for the use of the carrier in the conduct of its business as such and is intended to be so used or has been so used; or (2) upon the transportation of company material transported by one carrier, which constitutes a part of a railroad system, for another carrier which is also a part of the same system.

(d) The tax imposed by subdivision (c) of section 500 shall apply to all transportation of oil by pipe line. In case no charge for transportation is made, by reason of ownership of the commodity transported, or for any other reason, the person transporting by pipe line shall pay a tax equivalent to the tax which would be imposed if such person received payment for such transportation, and if the tax cannot be computed from actual bona fide rates or tariffs, it shall be computed (1) on the basis of the rates or tariffs of other pipe lines for like services, as determined by the Commissioner, or (2) if no such rates or tariffs exist, on the basis of a reasonable charge for such transportation, as determined by the Commissioner.

REGULATIONS.

Treasury Regulations 49 (revised June 1921):

ART. 92. * * *

Where the person so transporting is not a carrier, there is a taxable transportation of oil by pipe line within the meaning of section 501 (d), whenever the movement of said oil, effected by the owner thereof, is substantially similar to those movements which pipe-line

carriers usually undertake and perform; or, in other words, where the movement is not merely local and incidental to another business engaged in by the person so transporting, such as the producing or refining of oil. Thus, where a refiner maintains a main, trunk, or stem line from his refinery to an oil field or pool, the services he performs for himself are similar to those which pipe-line carriers would otherwise render to him. He should, therefore, pay the tax as though he had in fact employed the services of a carrier. If, on the other hand, the movement is from storage tanks to stills, which are a part of the same manufacturing unit, or from wells to flow tanks or storage tanks situate in the immediate vicinity, the movement is not such as a pipe-line carrier of oil would normally render, and consequently should not be taxed.

* * * * * *

COMMITTEE REPORTS

In House Report No. 45, 65th Congress, 1st Session, relating to the Revenue Act of 1917, the following statement is made with respect to the tax on transportation of oil by pipe lines (pp. 6–7):

> In this title your Committee recommends the following taxes:
>
> * * * * * *
>
> A tax equivalent to 5 per cent of the amount paid for transportation of oil by pipe lines, or where the owner of a pipe line transports his own oil, of the amount that would be paid at the listed rate, if payment were received.

In Senate Report No. 617, 65th Congress, 3rd Session, relating to the Revenue Act of 1918, the following statement is made with respect to Title V,

relating to the taxes on transportation, including transportation of oil by pipe line (p. 16):

> The provisions of this title are retained without substantial change, except the striking out of the tax on the issue of life insurance policies necessitated by reason of the new plan adopted for the taxation of such companies.

APPENDIX B

SEPTEMBER 6, 1921.

Memorandum for Mr. FRAZIER,
Supervisor of Collectors' Offices.

In a report dated September 2, 1921, the committee appointed by the Commissioner to formulate rulings with a view to putting into effect the provisions of T.D. 3197 relating to the transportation of oil by pipe line, laid down its interpretation of the Treasury Decision in question and made certain recommendations as to the procedure to be adopted in checking up current and delinquent taxes. Copy of this report, which the Commissioner approved on September 2, is attached.

It is suggested that the following outline of the ruling of the Bureau be furnished to the field men engaged in this work:

(1) All transportation of oil by pipe line, whether for hire or by a company transporting its own oil (except the movement of such oil by a pipe line carrier as is necessary for the use of that carrier in the operation of its pipe line) that is of a nature such as a pipe line carrier of oil would ordinarily render for hire, is subject to tax.

(2) It is not necessary that a pipe line company be a common carrier in order for its service to be taxable.

(3) There are three stages in the movement of oil from the well into the refinery.

(a) The movement from the well through flow or settling tanks to storage tanks on the lease.

(b) The movement from the lease storage tanks to the storage tanks usually maintained in the immediate vicinity of the refinery, usually within 150 feet thereof.

(c) The movement from the refinery storage tanks into the refinery itself.

(4) (a) The first stage, the movement from the well to the lease storage tanks, is primarily a part of production.

(b) The second stage, the movement from the lease storage tanks to the refinery storage tanks, is primarily transportation.

(c) The third stage, the movement from the refinery storage tanks into the refinery, is primarily a part of the process of manufacturing.

(5) Pipe line companies ordinarily render service for hire of the nature outlined in the second stage, and such movement of oil is subject to tax whether or not rendered for hire.

(6) The "gathering charge" made for moving the oil from the lease storage tanks to the storage tanks at the end of the stem pipe line, is subject to tax.

(7) The charge made for moving the oil from the stem line storage tanks to point of delivery, is subject to tax.

(8) "Delivery charges" are subject to tax.

(9) The following examples will serve to illustrate taxable and nontaxable service when rendered by a company transporting its own oil:

(a) A company operating a refinery located at a point outside a certain oil field, maintains a pipe line to transport its own oil from its wells to its refinery. The oil flows from each well to a flow or settling tank, and after remaining in the flow or settling tank for a few hours, is drawn by pipe into storage tanks on the lease, where the oil from the different wells is

assembled. The movement from this point to the delivery of oil into the storage tanks located in the immediate vicinity of the refinery (see paragraph 3-c), is subject to tax. The company may maintain a "storage tank farm" located from one to ten miles from its refinery, and move the oil through this farm on its way to the refinery storage tanks. In such a case the movement from the farm to the refinery storage tank is taxable.

(b) The same company may purchase oil from producers in the field, and transport it to its refinery. The movement of this oil is subject to tax as outlined in paragraph (a).

(c) A company operating a refinery located on its producing property may move its oil direct from the lease storage tanks into the refinery, without its going through refinery storage tanks. Such movement is subject to tax.

(10) Where a legitimate charge is made for the service rendered, such charge is the basis on which the tax is computed.

(11) Where a nominal charge or no charge is made for the service rendered, the tax should be based on the ordinary or customary charge for like or similar service in the same field, or if no such basis of comparison can be found, on the ordinary or customary charge for like or similar service in some other field where conditions are substantially similar.

(12) Where there is no basis on which to make a comparison, the full facts should be reported to the Commissioner, with such recommendation as the investigating officer may see fit to make.

(13) Investigating officers should not fix the basis of tax on cost of operation or maintenance of pipe lines, etc., but should always take as a basis rates

charged for the same or similar services by the same or other companies, and in the absence of such basis for comparison, refer the matter to the Bureau.

(14) It is believed that full report of each case investigated should be made to the Bureau.

(15) Penalties for failure to return and pay tax should not generally be asserted, but the Bureau should be furnished with full information and such recommendation as will enable it to determine the penalties to be assessed.

(16) Attempt should be made to secure waivers for tax barred from assessment by the statutes, and where such waivers cannot be secured, prompt report made to the Bureau, in order that suit to recover may be instituted.

(Signed) A. C. HOLDEN,
Acting Deputy Commissioner.

GAM
Incl., 9322.

U. S. GOVERNMENT PRINTING OFFICE: 1933